



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :
 :
v. :
 :
JONATHAN CUNEY, :
Defendant. :
-----X

ORDER

15 CR 143 (VB)

In an undated letter to the Clerk of Court, which was received and docketed on February 23, 2023, defendant requests a copy of the Statement of Reasons form in this case, which he says he needs in connection with his petition for a writ of error coram nobis. The Statement of Reasons form is not a publicly-filed document, in part because it contains sensitive personal identifying information. Although the Court discerns no particular reason why defendant would need the form in connection with the petition, in the interest of ensuring that defendant has what he believes he needs in this matter, the Court will provide a copy of the form to defendant. An appropriately redacted copy of the Statement of Reasons form is attached to this Order.

Chambers will mail a copy of this Order and its attachment to defendant at the following address:

Jonathan Cuneu, Reg. No. 71306-054
USP Lewisburg
U.S. Penitentiary
Satellite Camp
P.O. Box 2000
Lewisburg, PA 17837

Dated: February 24, 2023
White Plains, NY

SO ORDERED:

Vincent L. Briccetti
United States District Judge

DEFENDANT: JONATHAN CUNEY
CASE NUMBER: 15 CR 143 (VR)
DISTRICT: Southern District of New York

STATEMENT OF REASONS

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

- A. ☒ The court adopts the presentence investigation report without change.
- B. ☐ The court adopts the presentence investigation report with the following changes. *(Use Section VIII if necessary)*
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report.)
1. ☐ Chapter Two of the United States Sentencing Commission Guidelines Manual determinations by court: *(briefly summarize the changes, including changes to base offense level, or specific offense characteristics)*
 2. ☐ Chapter Three of the United States Sentencing Commission Guidelines Manual determinations by court: *(briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility)*
 3. ☐ Chapter Four of the United States Sentencing Commission Guidelines Manual determinations by court: *(briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations)*
 4. ☐ Additional Comments or Findings: *(include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it)*
- C. ☐ The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.

II. COURT FINDING ON MANDATORY MINIMUM SENTENCE *(Check all that apply)*

- A. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence is at or above the applicable mandatory minimum term.
- B. ☐ One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:
- ☐ findings of fact in this case: *(Specify)*
 - ☐ substantial assistance (18 U.S.C. § 3553(e))
 - ☐ the statutory safety valve (18 U.S.C. § 3553(f))
- C. ☒ No count of conviction carries a mandatory minimum sentence.

III. COURT DETERMINATION OF ADVISORY GUIDELINE RANGE: *(BEFORE DEPARTURES OR VARIANCES)*

Total Offense Level: 21
Criminal History Category: I
Guideline Range: *(after application of §5G1.1 and §5G1.2)* 37 to 46 months
Supervised Release Range: 1 to 3 years
Fine Range: \$ 15,000 to \$ 150,000

- ☒ Fine waived or below the guideline range because of inability to pay.

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IV. GUIDELINE SENTENCING DETERMINATION *(Check all that apply)*

- A. ☒ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.
- B. ☐ The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: *(Use Section VIII if necessary)*
- C. ☐ The court departs from the guideline range for one or more reasons provided in the Guidelines Manual.
(Also complete Section V.)
- D. ☐ The court imposed a sentence otherwise outside the sentencing guideline system (i.e., a variance). *(Also complete Section VI)*

V. DEPARTURES PURSUANT TO THE GUIDELINES MANUAL *(If applicable)*

A. **The sentence imposed departs:** *(Check only one)*

- ☐ above the guideline range
☐ below the guideline range

B. **Motion for departure before the court pursuant to:** *(Check all that apply and specify reason(s) in sections C and D)*

1. **Plea Agreement**

- ☐ binding plea agreement for departure accepted by the court
☐ plea agreement for departure, which the court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense departure motion.

2. **Motion Not Addressed in a Plea Agreement**

- ☐ government motion for departure
☐ defense motion for departure to which the government did not object
☐ defense motion for departure to which the government objected
☐ joint motion by both parties

3. **Other**

- ☐ Other than a plea agreement or motion by the parties for departure

C. **Reasons for departure:** *(Check all that apply)*

- | | | |
|---|--|---|
| <input type="checkbox"/> 4A1.3 Criminal History Inadequacy | <input type="checkbox"/> 5K2.1 Death | <input type="checkbox"/> 5K2.12 Coercion and Duress |
| <input type="checkbox"/> 5H1.1 Age | <input type="checkbox"/> 5K2.2 Physical Injury | <input type="checkbox"/> 5K2.13 Diminished Capacity |
| <input type="checkbox"/> 5H1.2 Education and Vocational Skills | <input type="checkbox"/> 5K2.3 Extreme Psychological Injury | <input type="checkbox"/> 5K2.14 Public Welfare |
| <input type="checkbox"/> 5H1.3 Mental and Emotional Condition | <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint | <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense |
| <input type="checkbox"/> 5H1.4 Physical Condition | <input type="checkbox"/> 5K2.5 Property Damage or Loss | <input type="checkbox"/> 5K2.17 High-Capacity, Semiautomatic Weapon |
| <input type="checkbox"/> 5H1.5 Employment Record | <input type="checkbox"/> 5K2.6 Weapon | <input type="checkbox"/> 5K2.18 Violent Street Gang |
| <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities | <input type="checkbox"/> 5K2.7 Disruption of Government Function | <input type="checkbox"/> 5K2.20 Aberrant Behavior |
| <input type="checkbox"/> 5H1.11 Military Service | <input type="checkbox"/> 5K2.8 Extreme Conduct | <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct |
| <input type="checkbox"/> 5H1.11 Charitable Service/Good Works | <input type="checkbox"/> 5K2.9 Criminal Purpose | <input type="checkbox"/> 5K2.22 Sex Offender Characteristics |
| <input type="checkbox"/> 5K1.1 Substantial Assistance | <input type="checkbox"/> 5K2.10 Victim's Conduct | <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment |
| <input type="checkbox"/> 5K2.0 Aggravating/Mitigating Circumstances | <input type="checkbox"/> 5K2.11 Lesser Harm | <input type="checkbox"/> 5K2.24 Unauthorized Insignia |
| | | <input type="checkbox"/> 5K3.1 Early Disposition Program (EDP) |
- ☐ Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the Guidelines Manual: *(see "List of Departure Provisions" following the Index in the Guidelines Manual.) (Please specify)*

D. **State the basis for the departure.** *(Use page 4 if necessary)*

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VI. COURT DETERMINATION FOR A VARIANCE *(If applicable)*

A. The sentence imposed is: *(Check only one)*

- ☐ above the guideline range
☐ below the guideline range

B. Motion for a variance before the court pursuant to: *(Check all that apply and specify reason(s) in sections C and D)*

1. Plea Agreement

- ☐ binding plea agreement for a variance accepted by the court
☐ plea agreement for a variance, which the court finds to be reasonable
☐ plea agreement that states that the government will not oppose a defense motion for a variance

2. Motion Not Addressed in a Plea Agreement

- ☐ government motion for a variance
☐ defense motion for a variance to which the government did not object
☐ defense motion for a variance to which the government objected
☐ joint motion by both parties

3. Other

- ☐ Other than a plea agreement or motion by the parties for a variance

C. 18 U.S.C. § 3553(a) and other reason(s) for a variance *(Check all that apply)*

- ☐ The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1)
☐ Mens Rea ☐ Extreme Conduct ☐ Dismissed/Uncharged Conduct
☐ Role in the Offense ☐ Victim Impact
☐ General Aggravating or Mitigating Factors *(Specify)*
☐ The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)
☐ Aberrant Behavior ☐ Lack of Youthful Guidance
☐ Age ☐ Mental and Emotional Condition
☐ Charitable Service/Good Works ☐ Military Service
☐ Community Ties ☐ Non-Violent Offender
☐ Diminished Capacity ☐ Physical Condition
☐ Drug or Alcohol Dependence ☐ Pre-sentence Rehabilitation
☐ Employment Record ☐ Remorse/Lack of Remorse
☐ Family Ties and Responsibilities ☐ Other: *(Specify)*
☐ Issues with Criminal History: *(Specify)*
☐ To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))
☐ To afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))
☐ To protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))
☐ To provide the defendant with needed educational or vocational training (18 U.S.C. § 3553(a)(2)(D))
☐ To provide the defendant with medical care (18 U.S.C. § 3553(a)(2)(D))
☐ To provide the defendant with other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))
☐ To avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6)) *(Specify in section D)*
☐ To provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))
☐ Acceptance of Responsibility ☐ Conduct Pre-trial/On Bond ☐ Cooperation Without Government Motion for
☐ Early Plea Agreement ☐ Global Plea Agreement ☐ Departure
☐ Time Served *(not counted in sentence)* ☐ Waiver of Indictment ☐ Waiver of Appeal
☐ Policy Disagreement with the Guidelines *(Kimbrough v. U.S., 552 U.S. 85 (2007); (Specify)*
☐ Other: *(Specify)*

D. State the basis for a variance. *(Use Section VIII if necessary)*

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VII. COURT DETERMINATIONS OF RESTITUTION

A. ☒ Restitution Not Applicable.

B. Total Amount of Restitution: \$ _____

C. Restitution not ordered: *(Check only one)*

1. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
2. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
3. ☐ For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
4. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s)' losses were not ascertainable (18 U.S.C. § 3664(d)(5)).
5. ☐ For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).
6. ☐ Restitution is not ordered for other reasons. *(Explain)*

D. ☐ Partial restitution is ordered for these reasons *(18 U.S.C. § 3553(c))*:

VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE *(If applicable)*

For the reasons stated on the record at sentencing, a sentence at the bottom of the Guidelines range is appropriate because although the crime was very serious -- the sale of numerous firearms with defaced serial numbers by a licensed firearms dealer -- there are substantial mitigating factors, namely, that defendant served honorably as a member of the U.S. Marine Corps, including in combat in Iraq; defendant is a family man who enjoys the strong support of family and friends; and defendant suffers from physical and mental health issues, including post traumatic stress disorder as a result of his military service.

Defendant's Soc. Sec. No.: [REDACTED] 6723

Defendant's Date of Birth: [REDACTED] 983

Defendant's Residence Address:
504 Forest Pointe Drive, East Greenbush, NY 12061

Defendant's Mailing Address:

Date of Imposition of Judgment
12/22/2015

Signature of Judge
Vincent L. Briccetti, U.S.D.J.

Name and Title of Judge
Date Signed 12/22/2015